

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

In the matter of

XXXXX

Petitioner

File No. 90527-001

v

Blue Cross Blue Shield of Michigan  
Respondent

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Issued and entered  
this 18<sup>th</sup> day of August 2008  
by Ken Ross  
Commissioner

**ORDER**

**I**

**PROCEDURAL BACKGROUND**

On June 23, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on June 30, 2008.

Because it involved medical issues, the Commissioner assigned the case to an independent review organization (IRO) which provided its analysis and recommendations to the Commissioner on July 21, 2008.

**II**

**FACTUAL BACKGROUND**

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) under its *Community Blue Group Benefits Certificate*. The Petitioner's doctor requested authorization for artificial disc replacement surgery. BCBSM denied authorization because it considers this procedure experimental for treatment of the Petitioner's condition. The Petitioner

appealed the denial through BCBSM's internal grievance process. After a managerial-level conference on June 5, 2008, BCBSM did not change its decision and issued a final adverse determination the same day.

### **III ISSUE**

Did BCBSM properly deny preauthorization for the Petitioner's artificial intervertebral disc replacement surgery?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner has degenerative disc disease and suffers from extreme pain and back spasms. Her doctor has recommended and she is requesting disc replacement surgery due to the progression of the disease. The Petitioner indicates that she has been living with this disease for a number of years. Normal activities cause unbelievable pain. Therapy and injections have failed to relieve her symptoms. The Petitioner does not believe that her disc replacement surgery is considered experimental or investigational. She argues that this surgery is a covered benefit under her certificate and BCBSM is required to pay for it.

#### **BCBSM's Argument**

Under the terms of the certificate of coverage, BCBSM does not pay for experimental treatment or services related to experimental treatment. BCBSM's medical director reviewed the documentation and concluded that artificial disc replacement surgery that was recommended for the Petitioner is experimental/investigational since it has not been scientifically demonstrated to be as safe and effective as conventional treatment.

#### **Commissioner's Review**

The Petitioner's certificate sets forth the benefits that are covered. In *Section 6: General Conditions of Your Contract* (page 6.3) the certificate of coverage states:

We do not pay for experimental treatment (including experimental drugs or devices) or services related to experimental treatment. . . .

Also, the certificate, in *Section 7: The Language of Health Care* (page 7.7) defines “experimental treatment” as:

Treatment that has not been scientifically proven to be as safe and effective for treatment of the patient’s conditions as conventional treatment.

The question of whether the Petitioner’s proposed artificial intervertebral disc surgery is experimental in nature was presented to an IRO for analysis as required by section 11(6) of the Patient’s Right to Independent Review Act. The IRO physician reviewer is board certified in orthopedic surgery, and has been in active practice for more than ten years.

The IRO reviewer indicated that the Petitioner has multiple levels of lumbar disc degeneration. The requested procedure of artificial disc replacement at L5-S1 would only address one of these levels. The long term outcomes of artificial disc replacement are unknown at this time. The long-term complications of this procedure remain unknown. More data on long-term outcomes is needed to establish the safety and efficacy of artificial disc replacement. Pursuant to the information set forth and available documentation the IRO reviewer concluded that artificial disc replacement is investigational for treatment of the Petitioner’s condition.

The Commissioner is not required in all instances to accept the IRO’s recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite “the principal reason or reasons why the Commissioner did not follow the assigned independent review organization’s recommendation.” MCL 550.1911(16) (b). The IRO reviewer’s analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the conclusion of the IRO and finds that the Petitioner's proposed artificial disc replacement is experimental/investigational for treatment of her condition and therefore is not a covered benefit under the certificate.

**V  
ORDER**

Respondent BCBSM's June 5, 2008, final adverse determination is upheld. BCBSM is not required to cover the Petitioner's artificial disc replacement.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.